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# Supreme Court of the United States

OCTOBER TERM, 1949

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No. 12, Original

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UNITED STATES OF AMERICA, *Plaintiff,*

v.

STATE OF LOUISIANA.

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## MOTION FOR TRIAL BY JURY, AND STATEMENT IN SUPPORT OF MOTION

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Comes now the State of Louisiana, without abandoning but re-asserting and re-urging all rights under its prior Motions herein filed, moves the Court that all issues of fact, insofar as this case presents an action at law, be tried by a jury; and that an order issue accordingly;

And, should the foregoing motion be opposed, Defendant prays that it be granted opportunity to be heard in oral argument and brief.

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## STATEMENT IN SUPPORT OF MOTION

The Seventh Amendment to the Constitution reads:

**"TRIAL BY JURY IN CIVIL CASES.—**In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

The Judiciary Act of 1789 established the courts of the United States and defined their jurisdiction.

"Suits in equity shall not be sustained in any of the courts of the United States in any case where plain, adequate and complete remedy may be had at law." Act of September 24, 1789, U.S.C.A., Title 28, Section 384 (Judicial Code, Section 267).

On September 29, 1789, the same Congress which adopted the Judiciary Act proposed to the Legislatures of the several states the article afterwards ratified as the Seventh Amendment of the Constitution of the United States.

Title 28 U.S.C.A., Section 1872 (old Section 343), provides that:

"In all original actions at law in the Supreme Court against citizens of the United States, issues of fact shall be tried by a jury."

The words "in suits at common law" which are contained in the Seventh Amendment of the United

States Constitution have been interpreted by this Court to mean all legal rights remedial at common law. *Root v. Railway Co.*, 105 U. S. 207 (1881); *Fenn v. Holme*, 21 How. 481 (1858); *Parsons v. Bedford*, 3 Peters 446 (1830).

In the case of *Root v. Railway Company*; *supra*, this Court stated that suits at "COMMON LAW" meant what the Constitution denominated in the third Article under the term "LAW"; that cases at common law, as thus denominated, not merely included suits which the common law recognized among its old and settled proceedings but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized and equitable remedies administered.

Although the Judiciary Act of 1789 has been held to be declaratory only of the principles of general equity jurisprudence and not intended to abridge the jurisdiction of the court as one of full equity powers, this Act in connection with the constitutional provisions as to trial by jury was construed as follows in the leading case of *Hipp v. Babin*, 19 How. (U. S.) 271, 278 (1856):

"Whenever a court of law is competent to take cognizance of a right, and has power to proceed to a judgment which affords a plain, adequate and complete remedy without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by a jury."

This interpretation of the effect of the constitutional provision as to trial by jury has been followed, cited and noted by a long line of decisions in the Supreme Court of the United States down to the present

time, and is the final basis of practically all these decisions as to the abridgment of the constitutional right to trial by jury. *Wright v. Ellison*, 1 Wall. 22; *Thompson v. R. R.*, 6 Wall. 137; *Ins. Co. v. Bailey*, 13 Wall. 616, 620; *Oelrichs v. Spain*, 15 Wall. 228; *Grand Chute v. Winegar*, 15 Wall. 355; *Root v. Railway Co.*, 105 U. S. 189, 212; *Killian v. Ebbinghaus*, 110 U. S. 568; *Buzard v. Houston*, 119 U. S. 347; *Whitehead v. Shattuck*, 138 U. S. 151; *Scott v. Nealy*, 140 U. S. 109; *Schoenthal et al. v. Irving Trust Co.*, 287 U. S. 92, 53 S. Ct. 50.

In the case of *Whitehead v. Shattuck*, 138 U. S. at page 151, the court said:

"The right which in this case the plaintiff wishes to assert is his title to certain real property; the remedy which he wishes to obtain is its possession and enjoyment; and in a contest over the title both parties have a constitutional right to call for a jury."

Mr. Justice Black, speaking for the minority, in the case of *Galloway v. U. S.*, 319 U. S. 372, 63 S. Ct. 1077, 1091, said:

"In 1789, juries occupied the principal place in the administration of justice. They were frequently in both criminal and civil cases the arbiters not only of fact but of law. Less than three years after the ratification of the Seventh Amendment, this Court called a jury in a civil case brought under our original jurisdiction. There was no disagreement as to the facts of the case. Chief Justice Jay, charging the jury for a unanimous Court, three of whose members had sat in the Constitutional Convention, said: 'For as, on the one hand, it is presumed, that

juries are the best judges of facts; it is, on the other hand, presumable, that the court(s) are the best judges of law. But, still, both objects are lawfully within your power of decision.' *State of Georgia v. Brailsford*, 3 Dall. 1, 4, 1 L. Ed. 483. \* \* \* "

"The language of the Seventh Amendment cannot easily be improved by formulas. The statement of a district judge in *Tarter v. United States, D. C.*, 17 F. Supp. 691, 692, 693, represents, in my opinion, the minimum meaning of the Seventh Amendment:

"The Seventh Amendment to the Constitution guarantees a jury trial in law cases, where there is substantial evidence to support the claim of the plaintiff in an action. If a single witness testifies to a fact sustaining the issue between the parties, or if reasoning minds might reach different conclusions from the testimony of a single witness, one of which would substantially support the issue of the contending party, the issue must be left to the jury. Trial by jury is a fundamental guaranty of the rights of the people, and judges should not search the evidence with meticulous care to deprive litigants of jury trials.

"The call for the true application of the Seventh Amendment is not to words, but to the spirit of honest desire to see that Constitutional right preserved. Either the judge or the jury must decide facts and to the extent that we take this responsibility, we lessen the jury function. Our duty to preserve this one of the Bill of Rights may be peculiarly difficult, for here it is our own power which we must restrain. We should



not fail to meet the expectation of James Madison, who, in advocating the adoption of the Bill of Rights, said: 'Independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; \* \* \* they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of right.'"

The right to a trial by jury in the Supreme Court of the United States is, therefore, not without precedent. Mr. Justice Black mentioned the trial by jury that was resorted to in the case of *Georgia v. Brailsford, et al.*, 3 Dall. 1. There have been at least two other cases, *Oswald v. State of New York* and *Catlin v. State of South Carolina*. (See Supreme Court of U. S., by Hampton L. Carson, 1891, Vol. 1, p. 169, Note 1.)

A suit of this kind by the United States against the State of Louisiana, insofar as the United States declares that it is the holder of fee simple title to lands underlying the Gulf of Mexico, within the boundaries of the State of Louisiana, is essentially an action at law against the people of Louisiana in their collective sovereign capacity.

The provisions of Title 28 U.S.C.A., Section 1872 (old Section 343), apply to sovereign states in original actions at law in the Supreme Court of the United States.

The State of Louisiana is holding said lands in controversy for its citizens, and this action constitutes a proceeding against the citizens of the state.

When this Court in *McCready v. Virginia*, 94 U. S.

391 (1876) held that each state owns the beds of tide waters within its jurisdiction and the tide waters, themselves, it announced this principle:

"For this purpose the State represents its People, and the ownership is that of the People in their united sovereignty."

This suit, insofar as it is an action at law, involves title to the beds of tide waters within the jurisdiction of the State of Louisiana. The State represents its People in claiming fee simple title thereto, and in denying title in the United States. The suit by the United States is, therefore, against the People of Louisiana who are its citizens. Hence, the State of Louisiana, Defendant here, by the Seventh Amendment to the Constitution and by the force of U.S.C.A. Title 28, Section 1872 (old Section 343) is entitled to a trial by jury and the motion should be granted.

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